

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-416-C - ORDER NO. 2004-598
DECEMBER 8, 2004

IN RE:	Generic Proceeding for the Establishment of a)	ORDER RULING ON
	Requirement that Non-Facilities Based)	GENERIC PROCEEDING
	Competitive Local Exchange Carriers)	
	Providing Prepaid Local Telephone Service)	
	be Required to Post an Appropriate Surety)	
	Bond.)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on a generic proceeding for the establishment of a requirement that non-facilities based Competitive Local Exchange Carriers (CLECs) providing prepaid local telephone service be required to post an appropriate surety bond, and related issues. However, because of the reasoning as stated below, we decline to establish such a requirement. We also rule on the other related issues below.

A Notice of Filing was published, pursuant to the instructions of the Commission's Executive Director. Intervenors in this case are the South Carolina Telephone Coalition (SCTC), Aspire Telecom, Inc. (Aspire), National ALEC Association/Prepaid Communications Association (the Associations), Verizon, BellSouth Telecommunications, Inc. (BellSouth) and the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

A hearing was held on this matter on June 18, 2003 before the Commission, with the Honorable Mignon L. Clyburn, Chairman, presiding. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel and Jeffrey M. Nelson, Staff Counsel. SCTC was represented by M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire. Aspire was represented by Larry D. Kristinik, Esquire. The Associations were represented by Faye A. Flowers, Esquire. BellSouth was represented by Patrick W. Turner, Esquire. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire. The Intervenor Verizon did not appear at the hearing.

The Staff presented the testimony of James M. McDaniel, Chief of the Commission's Telecommunications section. SCTC presented the testimony of Ronald K. Nesmith. Aspire presented the testimony of R. Adam Kane. The Associations presented the testimony of Donald L. Aldridge. BellSouth presented the testimony of Patrick C. Finlen. The Consumer Advocate presented no witnesses.

II. SUMMARY OF TESTIMONY

A. James M. McDaniel (Direct)

The Commission Staff offered the testimony of James M. McDaniel, Chief of the Telecommunications area of the Commission's Utilities Department. McDaniel testified as to the origin of this generic proceeding. Aspire Telecom, Inc., a local carrier providing prepaid local exchange services, applied for local authority before this Commission, and, as a part of that application, requested several waivers of the Commission regulations governing telecommunications utilities. This Commission granted several waivers of regulations, which, in previous cases, had been determined to create a hardship for

carriers offering competitive local exchange services (CLECs). However, Aspire had also requested waivers of Regulations 103-622.2, regarding late payment charges, and 103-633, regarding procedures for termination of service. Aspire had requested that it be allowed to assess a flat late payment charge of \$10.00 in lieu of the prescribed rate of 1.5% of the balance brought forward from a previous billing. Additionally, Aspire sought waiver of the regulation requiring a company to provide a second five day written notification of disconnect of service as required by the Commission regulation governing procedures for termination of service. Tr., McDaniel at 13-14.

Utilities Department Staff opposed the waiver of these regulations, mainly because it would be difficult to administer waivers of such regulations on a piece meal basis. In Order No. 2002-724, the Commission denied the request for waiver of these regulations for Aspire, and found that a generic proceeding to consider requirements for all prepaid local exchange carriers was appropriate.

During a subsequent Commission regular business meeting, this Commission was apprised of an impending disconnect of service by an incumbent local exchange carrier of a prepaid local exchange carrier's services due to non-payment for service obtained from the incumbent local exchange carrier by the competitive local exchange carrier. The Commission appeared to be concerned about the unrecovered indebtedness by the incumbent local exchange carrier and potential impact on the customer who had paid for their service obtained from the competitive local exchange carrier. This Commission renewed its interest in requiring prepaid local competitive exchange carriers to post a surety bond as a means of protecting the incumbent local exchange carriers from

uncollectibles and consumers who have paid for services that they will not receive, due to a disconnect of wholesale services provided to the competitive local exchange carrier. As a result of this renewed interest, the Commission determined that a bond requirement for prepaid local exchange should be addressed as part of this proceeding. Id. at 14-15.

The Commission Staff undertook research on this topic by sending a request for assistance to eight states located in the Southeastern United States. Inquiry was sent to representatives of the regulatory staff or public staff for the states of Alabama, Georgia, Florida, Louisiana, Mississippi, North Carolina, Tennessee, and Kentucky. Staff received responses from the States of Florida, Louisiana, Mississippi, North Carolina, and Kentucky. The responses indicated that only two states have directly addressed specific requirements to be addressed at the present proceeding. The North Carolina Utilities Commission is the only responding Commission that has established Rules for Competitive Local Providers offering prepaid local exchange service. Similarly, the Louisiana Public Service Commission is the only responding Commission which has established a bond requirement for prepaid local service providers. Id. at 15.

The North Carolina Commission, in its rules, recognized that specific requirements were needed for carriers providing prepaid local exchange services in contrast to those requirements for competitive local exchange carriers that offered a full array of local services. Under North Carolina Utilities Commission Rule 17-6, a contract service agreement between a consumer and a competitive local exchange carrier governs the manner in which prepaid local exchange services are provided. McDaniel stated that a modified version of this rule could reduce the regulatory burden for small competitive

local exchange carriers providing a specialized service, such as prepaid local exchange service. Id. at 16. McDaniel then proposed specific modifications of the Rule for South Carolina use. Id. at 16-17.

With regard to a bonding requirement, McDaniel pointed to the Louisiana methodology, which contains a formula for a calculation of the amount of a bond required of specific carriers. McDaniel stated that the public interest would be served by the establishment of a bond requirement, and that the Louisiana formula method would be useful in South Carolina. The bond could be used to guard against problems created when a consumer purchases services in advance, and then the Company unexpectedly exits the market. McDaniel noted that this Commission has previously required carriers offering prepaid calling cards and long distance services to post a bond. Id. at 17-18.

B. R. Adam Kane

R. Adam Kane, President of Aspire Telecom, Inc., presented Testimony. Aspire received a Certificate of Public Convenience and Necessity from the Commission to provide resold local exchange and exchange access telecommunications services in South Carolina. Aspire is also certificated to serve customers in North Carolina. Aspire provides services on a prepaid basis in both states.

In North Carolina, Aspire assesses a \$10 late fee, and does not provide a second notice before disconnect. Aspire requests a change to Commission Regulation 103-622.2 as it pertains to late fees. In lieu of the regulation's stated late fees of 1 ½%, Aspire recommends that authorization be granted to assess a \$10 late fee. Kane notes that the purpose of a \$10 late fee is to allow prepaid competitive local exchange carriers like

Aspire to provide to customers a grace period in which their service will continue after their prepaid service has expired. Without the late fee, according to Kane, Aspire cannot purchase additional service days from the incumbent carrier that would allow for a grace period. The 1 ½% late fee does not allow the Company to purchase the additional service days. Kane notes that Aspire's policy and proposed late fee structure allow it to maintain continuous service to subscribers who are unable to make a renewal payment exactly on time and flexibility of payment that avoids higher fees for restoration of service. Tr. Kane at 128.

In reply testimony, Kane opposes the establishment of a bond. Kane notes that this would increase the Company's financial burden. Tr., Kane at 133.

C. Donald L Aldridge

Donald L. Aldridge, President of AmeriMex Communications, testified on behalf of the Associations. The Associations oppose increased regulation of competitive local exchange carriers, particularly regulations specifically targeted to prepaid local carriers. Further, according to Aldridge, competition, not regulation should govern the telecommunications marketplace. Tr., Aldridge at 189-190.

The Associations strongly oppose establishment of a bond requirement for prepaid local service providers. Aldridge opines that it is difficult to distinguish a prepaid carrier from a traditional carrier, since both bill recurring charges in advance. Id. at 191. Aldridge notes that the Commission reviews the financial capability of all applicants, and that there is no evidence that prepaid providers go out of business with any more or less frequency than other competitive providers of local service. Id. at 192. Aldridge states

that a bond would be difficult to administer. Id. Further, the bond ties up monies that could otherwise be used for the companies, and a surety bond is difficult to obtain, according to Aldridge. Aldridge approves of using service contracts with customers of the companies. Id. at 192. Finally, Aldridge believes that the Commission should grant the requested waivers of the Regulations. Id. at 196.

In reply testimony, Aldridge opposes SCTC's proposal that the Commission establish a bond requirement which includes protection for SCTC's member companies, as well as the consumers. Id. at 197-198.

D. Ronald K. Nesmith

Ronald K. Nesmith provided testimony for the SCTC. SCTC agrees with the bonding requirement proposed by the Staff, but believes that the bond should be in an amount not only to allow for monies to be refunded to customers, but also in an amount sufficient to cover the indebtedness of a carrier to the underlying facilities-based carrier. Tr., Nesmith at 239-240. Nesmith also filed reply testimony to that of the Associations' witness. Nesmith pointed out that without any requirement to maintain assets in the state, there is no way for an incumbent carrier to collect on any judgment it may obtain with regard to amounts owed. Therefore, a bond requirement would be superior to any deposit requirement that the Commission might impose instead, according to Nesmith. Tr., Nesmith at 244.

E. Patrick C. Finlen

BellSouth presented the reply testimony of Patrick C. Finlen. Finlen replied to the testimony of witnesses Aldridge, Nesmith, and Kane. Finlen also had no objections to the direct testimony of the Staff, given by James McDaniel.

Finlen states his disagreement with Associations' witness Aldridge as to the deposit requirement for resellers. Tr., Finlen at 278. Further, Finlen opposes the establishment of a bond of \$5,000 for all local service providers that accept deposits or bill any portion of their charges in advance. Finlen states a belief that bonds ought to be applied to only non-facilities based carriers. Tr., Finlen at 282.

Finlen also takes issue with SCTC witness Nesmith's proposal that any bond be in an amount sufficient to cover the indebtedness of a carrier to the underlying facilities based carrier. Finlen states that this should be done by negotiation, or, if necessary, arbitration over language in the interconnection agreement. Tr., Finlen at 284.

Also, Finlen opposes Aspire witness Kane's proposal to collect a \$10 late fee instead of the 1 ½% required in Commission Regulation 103-622.2. Finlen notes that that regulation applies to every telecommunications utility, not just non-facilities based competitive local exchange carriers. Tr., Finlen at 285. Finlen proposes the possibility of a modified regulation, calling for either a \$10 late payment fee or 1.5% of any unpaid balance brought forward from the previous billing date, whichever is greater. Tr., Finlen at 286.

F. James M. McDaniel (Rebuttal)

In his rebuttal testimony, Staff witness James McDaniel continued to recommend that the Commission establish a mechanism to protect the consumers. Typical customers served by the prepaid local exchange carrier are individuals who are considered high risk customers. Such customers would have trouble paying additional funds if their carrier exits the market. Accordingly, McDaniel notes that a bond would be a method of protecting customers who are already financially struggling and are probably the least able to absorb the loss of charges collected for prepaid local exchange service. Tr., McDaniel at 23-24. McDaniel noted that he had no opposition to some modification of the Louisiana methodology, if appropriate, for South Carolina. Id. at 24.

With regard to SCTC witness Nesmith's testimony, McDaniel expressed concern that the interest of the underlying carrier may be difficult for the Commission to consider in sizing a bond requirement. For example, the amounts owed by the prepaid local exchange carrier to the underlying incumbent local exchange carriers may be impacted by a number of variables. Id. at 25.

Finally, McDaniel stated that it had not been his intent in direct testimony to recommend elimination of the need for a carrier to file tariffs with the Commission, in the situation where contracts are used to govern arrangements between end user and the carrier. Id. at 26.

III. DISCUSSION

After considering the testimony in this case, the Commission recognizes that the needs of prepaid telephone service providers are different from the needs of other local

exchange carriers. Also, the Commission is aware of the fact that North Carolina, where Aspire is headquartered, is the only state responding to a Staff survey that regulates prepaid local telephone service carriers. North Carolina allows carriers providing prepaid local service to enter into contracts with their customers. These contracts include the terms and conditions under which service will be provided as well as discontinued. However, the evidence in the record does not convince us at this time that allowing Aspire to waive Regulations 103-622.2 and 103-633 is in the public interest. Aspire's customers most likely have poor credit ratings and may have had their service disconnected by another carrier. These customers have few choices of service providers. The current Regulations provide protection to these customers. This protection could diminish or disappear if Aspire is allowed a waiver of Regulations 103-622.2 and 103-633 or allowed to enter into contractual arrangements with its customers. Therefore, our Order No. 2002-724 which denied Aspire's request for waiver from Regulations 103.622.2 and 103-633 shall be upheld.

Further, the evidence convinces us that non-facilities based carriers providing prepaid local telephone service should not be required to post a surety bond. Louisiana is the only state responding to the Staff's survey that requires prepaid local service providers to post such a bond. Requiring a bond would increase the cost of providing this prepaid service to customers who generally have financial difficulties. Also, if a service provider abides by the rules and regulations, the customers have protection from paying for services that are not provided. If a service provider does not abide by the rules and regulations, obtaining the information necessary for properly distributing the bond to the

customers will be very difficult, if not impossible. This Commission must continually monitor the provision of non-facilities based prepaid local telephone service. However, at this time, the evidence does not support requiring non-facilities based prepaid providers of local service to post surety bonds.

IV. FINDINGS AND CONCLUSIONS

1. North Carolina is the only State responding to a Commission Staff survey that regulates prepaid local telephone service carriers as a group. Tr., McDaniel at 15.

2. North Carolina allows contracts between prepaid local telephone service carriers and end users, which include the terms and conditions under which service will be provided as well as discontinued. Id. at 16.

3. A waiver of Regulations 103-622.2 and 103-633, which govern late payments and discontinuation of service in South Carolina is not in the public interest.

4. These regulations protect the public. This protection could diminish or disappear if a waiver of these regulations is allowed or contracts between carriers and end users are allowed to state terms and conditions under which service will be provided as well as discontinued.

5. At present, the evidence does not support the posting of surety bonds by prepaid non-facilities based local telephone service providers.

6. Requiring such a bond would increase the cost of providing this service to customers who generally have financial difficulties.

7. The Commission shall monitor the provision of non-facilities based prepaid local telephone service in the future with an eye towards the surety bond issue and other discussed issues.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)